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IN THE

Supreme Court of the United States

OCTOBER TERM, 1970

NO.

RICHARD L. GRAY,

Petitioner

vs.

GULF, MOBILE & OHIO RAILROAD COMPANY, a corporation, and INTERNATIONAL ASSOCIATION OF MACHINISTS AND AEROSPACE WORKERS, AFL-CIO

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

To the Honorable, the Chief Justice and the Associate Justices of the Supreme Court of the United States:

The Petitioner prays the Court for a Writ of Certiorari directed to the United States Court of Appeals for the Fifth Circuit, to the end that this Court may review a decision which that Court has rendered in a case involving the parties above-named. And the Petitioner respectfully shows to this Court:

THE OPINIONS AND JUDGMENTS OF THE COURTS BELOW

The Opinion of the United States Court of Appeals for the Fifth Circuit has not yet been printed in the official reports, but is set forth, along with the Judgment of that Court, in the Appendix to this Petition.

The case came to the Court of Appeals on appeal from a Summary Judgment of the United States District Court for the Southern District of Alabama. The Opinion and Judgment of the District Court is reported at 302 F. Supp. 292 (1969), and is also set forth in the Appendix to this Petition.

JURISDICTION OF THIS COURT

The Judgment of the Court of Appeals is dated July 13, 1970, and was entered on that date.

Jurisdiction to review, by Writ of Certiorari, the Judgment of the Court of Appeals is conferred on this Court by the provisions of 28 USC §1254.

QUESTIONS PRESENTED FOR REVIEW

Is the Federal Railway Labor Act to be construed as authorizing a requirement upon the plaintiff that, in order to hold his job with the defendant Railroad Company, he must contribute financial support to the defendant labor Union, even though it is established that his doing so would directly conflict with his religious faith?

If the statute be so construed and applied against the plaintiff, does that not violate rights guaranteed to him by the Constitution of the United States?

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Provisions of the Constitution of the United States and of the Federal Railway Labor Act pertinent to this case are as follows:

"Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof".

First Amendment to the Constitution of the United States

"No person shall be . . . deprived of life, liberty, or property, without due process of law . . ."

Fifth Amendment to the Constitution of the United States

"Eleventh. Notwithstanding any other provisions of this chapter, or of any other statute or law of the United States, or Territory thereof or of any State, any carrier or carriers as defined in this chapter and a labor organization or labor organizations duly designated and authorized to represent employees in accordance with the requirements of this chapter shall be permitted—

(a) to make agreements, requiring, as a condition of continued employment, that within sixty days following the beginning of such employment, or the effective date of such agreements, whichever is the later, all employees shall become members of the labor organization representing their craft or class: *Provided*, That no such agreement shall require such condition of employment with respect to employees to whom membership is not available upon the same terms and conditions as are generally applicable to any other member or with respect to employees to whom membership was denied or terminated for any reason other than the

failure of the employee to tender the periodic dues, initiation fees, and assessments (not including fines and penalties) uniformly required as a condition of acquiring or retaining membership".

45 USC §152, Eleventh

STATEMENT OF THE CASE

The plaintiff's Complaint established federal jurisdiction in this case on the basis of 28 USC §1331(a) and 1343 and 42 USC §1988.

As both the District Court and the Court of Appeals have stated, the essential facts of the case "are not disputed" (2a, 22a[1]). The defendants have a contract between them, by which employees of the defendant Railroad Company are required to pay dues and fees to the defendant Union in order to hold their jobs with the Railroad Company (2a-4a, 22a-23a). There is a federal statute which in general authorizes such contracts. 45 USC §152, Eleventh.

The plaintiff, a railway machinist, declined to pay such dues and fees, upon the ground that his being compelled to support or pay money to any labor Union directly conflicted with his religious faith and convictions (4a, 23a). He was, however, willing, and offered to contribute, on a regular basis, to public charity an amount of money equivalent to the Union dues and fees—a procedure which had at one time

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[1]Unless otherwise indicated, page references are to the Appendix to this Petition.

been suggested to the constituent Unions of the AFL-CIO by the "AFL-CIO Executive Council on Union Membership and Religious Objectors" (7a, 25a).

The District Court found that there was no dispute as to "the sincerity of plaintiff's religious faith" in this matter, and that there was "before the Court" a "sincere individual who finds such organization in conflict with his religious conscience" (24a, 30a). The Court of Appeals refers to the plaintiff as one "whose religious convictions compel him to reject all forms of Union affiliation", and the Court of Appeals twice declared that "we do not doubt that plaintiff Gray has a genuine and sincere religious conviction that his financial support of a labor Union would be wrong" (1a, 7a, 19a).

The plaintiff went through all steps of petition and appeal prescribed by the defendants, urging upon them that he not be "forced to abandon" his "religious conviction in order to hold [his] job" (Joint Appendix in Court of Appeals, p. 13). His plea was "I want to earn my living and still adhere to my religion" (Joint Appendix in Court of Appeals, p 13). Nevertheless, the Railroad Company, at the demand of the Union, discharged the plaintiff solely because of his unwillingness to pay dues and fees to the Union (8a, 26a).

The plaintiff upon being discharged, instituted suit in the United States District Court for the Southern District of Alabama, at Mobile, where the defendant

Railroad Company has its principal office. Upon the pleadings in the case, and affidavits and documentary material filed therewith, the Court deemed that the case was "properly before the Court for Summary Judgment" (22a). The District Court thereupon entered Summary Judgment for the defendants, denied the plaintiff any relief and dismissed the action (31a). These rulings were, upon appeal, "affirmed" by the Fifth Circuit Court of Appeals (19a).

ARGUMENT AMPLIFYING REASONS WHY A WRIT OF CERTIORARI SHOULD BE GRANTED

In the diadem of the rights guaranteed to the individual by the Constitution of the United States, there is assuredly none higher or greater than that of religious liberty. Yet the ruling of the Courts below is that this bright and guiding star becomes eclipsed and fades entirely from judicial vision when confronted with a demand for dues and fees under a Union shop contract.

Here the defendants called upon the plaintiff, in the name of an authority they claimed to have been conferred on them by federal statute and said to him: "Give up either your religious faith or your employment. You are now going to be forced to abandon the one or the other". And upon his clinging to his religion, they took from him his employment. Whereupon, he is informed by the rulings of the Courts below that nowhere in the Constitution or laws of this Nation is there any protection or relief for him.

I.

The Plaintiff's Religious Faith Is In Genuine And Direct Conflict With The Requirement Placed Upon Him By The Defendants

It would seem, at this point, pertinent to establish clearly that the plaintiff is completely sincere in claiming that the compulsion in question is irreconcilable with his religious faith. On this the record is unequivocal.

The plaintiff alleged under oath that "to pay any dues or fees to the Union . . . would violate his religious convictions", and that assertion has not been denied by the defendants (Joint Appendix in Court of Appeals, p. 3). The arbitrator, before whom the plaintiff was given a hearing under the provisions of the defendants' contract, found that the plaintiff was in truth and in fact refusing to pay dues and fees to the Union "because of his religious convictions" (Joint Appendix in Court of Appeals, p. 70).

At his hearing before the arbitrator, the plaintiff made the following statement:

> "I am not willing to pay any dues or fees to the Union, because it is against my religious convictions to do so. I have previously made this clear to the Company and to the Union.
>
> "I am a member of the Seventh-Day Adventist Church. I am a devoted believer in the tenets and teachings of this Church, and I try to follow them conscientiously.

"My Church teaches that 'the remedy for social evils is not to be found in argument, controversy or strife' and that 'the remedy must be secured individually' — not through organization but by 'change of heart' and 'attitude' in each person (5a, Joint Appendix in Court of Appeals, pp. 10-11).

"The leaders of my Church have emphasized this many times:

'. . . A Seventh-Day Adventist should not join a group that will take the power of decision from him. There might be times when the action of the group as a whole would be contrary to the Christian principles he embraces'.

'A Seventh-Day Adventist cannot join in conflict with any class, either capital or labor, and retain his power to draw men by the influence of the Holy Spirit. A Seventh-Day Adventist would antagonize the working man if he should join forces against labor and he would be unable to witness successfully for Christ before the employer if he aligns himself with those opposing management'.

'In this work we are to preserve our individuality. We are not to unite with secret societies or with trade unions. We are to stand free in God, looking constantly to Christ for instruction' (5a, Joint Appendix in Court of Appeals, pp. 11-12).

"The 'historic' and 'official' position of our Church is stated as follows:

> 'The Seventh-Day Adventist Church is against involvement with labor organizations'.

"Clearly I would violate these principles and these teachings of my Church if I contribute financial assistance and support to the International Association of Machinists, AFL-CIO. And in so doing I would violate my own conscience and religious conviction" (Joint Appendix in Court of Appeals, p. 13).

At an earlier hearing before officials of the Union, the plaintiff's pastor, Reverend Roland A. Lehnhoff, testified that the plaintiff:

> "... [I]s a member of the Seventh-Day Adventist Church whose position is that we do oppose joining labor Unions and paying Union dues" (Joint Appendix in Court of Appeals, p. 56).

The District Court correctly observed that "the members" of the Seventh-Day Adventist Church "as individuals, are the sole judge for their action" in this realm. But that Court was inadvertent to the admitted facts in stating that this Church "does not advocate that its members refrain from joining or supporting labor Unions" (30a). The Church does not purport to place any requirement upon its members in the matter, but, as seen above, does teach them to refrain

from aligning themselves with, or in any manner supporting, labor organizations.

The Court of Appeals summarized the matter as follows. "From these statements in the record we gather that there is no catechistical pronouncement directing all Seventh-Day Adventists to abstain from joining or supporting labor unions. At the same time, we have no reason to doubt that plaintiff Gray's understanding of the tenets of his Church had led him to embrace the sincere religious conviction that it would be wrong for him to join or support a labor union" (7a).

And, as hereinabove pointed out, the conclusion of the District Court was that there is no dispute as to "the sincerity of plaintiff's religious faith" in this matter, and that there was "before the Court" a "sincere individual who finds such organization in conflict with his religious conscience" (24a, 30a).

Similiarly, as has been also noted, the Court of Appeals concluded that the plaintiff was a man "whose religious convictions compel him to reject all forms of union affiliation" and that "we do not doubt that plaintiff Gray has a genuine and sincere religious conviction that his financial support of a labor union would be wrong" (1a, 19a).

Thus it stands as established and uncontradicted that the plaintiff's religious faith is in direct conflict with the requirement of the defendants that he pay dues and fees to the Union.

II.

Since The Requirement Placed Upon The Plaintiff By The Defendants Directly Conflicts With His Religious Faith, Such Requirement Is Either Unauthorized By The Statute—Or If It Be Held Authorized By The Statute, It Nevertheless Cannot Prevail Against His Constitutional Rights

It is important to bear in mind that this is not a situation in which compulsion is imposed upon the plaintiff by purely private action and in which the hand of Government is not present—and in which, therefore, constitutional limitations have no relevance. This Court has ruled specifically to the contrary.

In *Railway Employes' Department, AFL vs. Hanson*, this Court, having before it the same statute and the same contract, which are now in question—albeit, the Railroad Company and the Union were not those which are here involved—declared that the hand of the Federal Government is the effective force upon the employee in this situation, that this contract has "the imprimatur of the federal law upon it", and that "the federal statute is the source of the power" by which the right of the individual employee is "lost or sacrificed". "The enactment of the federal statute authorizing union shop agreements", said the Court, "is the governmental action on which the Constitution operates, though it takes a private agreement to invoke the federal sanction". *Railway Employe's De-*

partment, AFL vs. Hanson, 351 US 225, 232, 76 S Ct 714, 100 L Ed 1112, 1130[1].

In *Hanson*, this Court upheld the general validity of this statute, but it was specifically stated that the Court "put to one side" and reserved for future decision "situations not now before us" under which the protections of the First Amendment might be invoked. *Railway Employes' Department, AFL vs. Hanson*, 351 US 225, 242, 76 S Ct 714, 100 L Ed 1112, 1136.

Likewise, in *International Association of Machinists vs. Street*, the Court again emphasized that, in *Hanson*, it had upheld Section 2, Eleventh of the Railway Labor Act, only against a generalized claim that it was broadly and on its face unconstitutional. The Court said:

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[1]The defendants, and likewise the District Court, have placed emphasis on the *Otten* and *Wicks* cases. *Otten vs. Baltimore & Ohio Railroad Co.*, 205 F. 2d 58 (2nd Cir., 1953); *Otten vs. Staten Island Rapid Transit Co.*, 222 F. 2d 919 (2nd Cir., 1955); *Wicks vs. Southern Pacific Co.*, 231 F. 2d 130 (9th Cir., 1956). Those decisions proceeded, however, upon the view, specifically rejected by this Court in *Hanson*, that this Union shop agreement, which is prevalent throughout the railway industry of the Nation, is simply a private affair in which no governmental action is present, and in which, consequently, there can be no constitutional problem or issue.

It should, moreover, be noted that in Alabama, where this case was litigated, there is a State "right-to-work" law, which would have protected the plaintiff from the compulsion here in question, were it not for the fact that the federal statute affirmatively and expressly strikes down such protections everywhere. 26 Ala. Code §375.

"It is argued that our disposition of the First Amendment claims in *Hanson* disposes of appellees' constitutional claims in this case adversely to their contentions. We disagree.

• • •

"... [T]his Court passed merely on the constitutional validity of §2, Eleventh of the Railway Labor Act on its face, and not as applied to infringe the particularized constitutional rights of any individual.

• • •

"We therefore reserved decision of the constitutional questions which the appellees present in this case".

International Association of Machinists vs. Street, 367 US 740, 746, 748, 81 S Ct 1784, 6 L Ed 2d 1141, 1148, 1149

This Court in *Street* then analyzed the statute and its legislative history and declared that it did not construe the statute as authorizing compulsion upon an employee to pay money to a labor Union, as a condition of holding his job, if, and to the extent that, the Union used such money for political and ideological purposes which the employee opposed. *International Association of Machinists vs. Street*, supra. See also *Brotherhood of Railway Clerks vs. Allen*, 373 US 113, 83 S Ct 1158, 10 L Ed 2nd 235.

No such qualification appears, of course, upon the face of the statute. Yet this Court, in the interest of First Amendment rights of freedom of speech and

freedom of association, construed this statute as having no meaning or intendment to authorize the exaction of Union dues and fees when such exaction would conflict with these First Amendment rights.

Similarly, in the realm of religious liberty, this Court has recently construed the Universal Military Training and Service Act as affording military exemption to one who opposed war not in the sense of a traditional religious faith but as a matter of "deeply held" moral and ethical conviction. *Welsh vs. United States*, __ US __, 90 S Ct __, 26 L Ed 2d 308.

In this case, as will be remembered from the quotations hereinabove set forth, there is no doubt but that the plaintiff's religious convictions represent religion in every full and traditional sense. In the example, then, of *Street* and *Welsh*, is it not appropriate to construe the present statute as not meaning to authorize the exaction of Union dues and fees from individuals like the plaintiff, as to whom such exaction would clearly and undeniably be in conflict with his religious faith?

If, however, the Court is unwilling thus to construe the statute, we come to the ultimate constitutional question. Can the Federal Government, in the face of the First "Thou Shall Not" set up against it in the Constitution, impose upon a citizen a compulsion that he abandon either his religion or his employment?

This is not in any wise a misstatement nor an overstatement of the issue. As has been seen, it is settled that the Federal Government is here the power behind

the action and the compulsion. And it is plain beyond argument that the plaintiff is being implacably told: "You can continue to work in this job, only if you relinquish and cease to practice your religious faith. Pay the Union dues, though it violates your religion, else leave this job—one or the other. You cannot earn your living in this employment and at the same time hold to your religion".

Can there be any possible doubt that this is an interference with the employee's "free exercise" of his religion? What could be a more fundamental interference with an individual's religion than to require that it be exercised only upon the penalty of his giving up his livelihood?

It may be said that the plaintiff can go elsewhere and perhaps find a job in which he can both work and practice his religion. But so could the employees in *Street* have done. If an employee loses his job because he stands against a compulsion that violates his constitutional rights, the contest is certainly not lawfully or rightly resolved by telling him that he can go hence and seek other employment.

Moreover, as a matter of hard fact and actuality, the work in which this plaintiff is trained and skilled, that of railway machinist, is closed to him everywhere. For, as is common knowledge, the same compulsion under the same Union shop agreement exists throughout the railway industry of our country.

Essentially, the reasoning process, by which the Courts below rule against the plaintiff in this situa-

tion, is that of deferring to the "policy makers", that is, Congress in their determining of what is appropriate to the carrying out of their delegated power to regulate interstate commerce (27a). This reasoning is expressed in *Hanson* as follows:

> "The task of the judiciary ends once it appears that the legislative measure adopted is relevant or appropriate to the constitutional power which Congress exercises. The ingredients of industrial peace and stabilized labor-management relations are numerous and complex . . . The decision rests with the policy makers, not with the judiciary".
>
> *Railway Employes' Department, AFL vs. Hanson*, 351 US 225, 234, 76 S Ct 714, 100 L Ed 1112, 1132

But it is one thing to defer to the choice of the policy maker when the central question is whether the policy maker's choice is rationally related to the carrying out of delegated power. Deferring to such choice when a monolithic "Thou Shall Not" stands in the way, is an entirely different matter. The latitude to be allowed to the policy weighing process is surely not the same in these two situations.

Here, it is submitted, lies the fundamental error of the Courts below. *Hanson*, which both the lower Courts basically relied on, was, for example, not a case in which the plaintiffs were invoking the shield of the First Amendment to protect "the free exercise" of their religion or their "freedom of speech", and the like. The Court said "that problem is not presented

by this record". *Railway Employes' Department, AFL vs. Hanson*, 351 US 225, 242, 76 S Ct 714, 100 L Ed 1112, 1136 (concurring opinion of Mr. Justice Frankfurter). *International Association of Machinists vs. Street*, 367 US 740, 746, 748, 81 S Ct 1784, 6 L Ed 2d 1141, 1148, 1149.

Thus the clash of a plea of religious liberty under the First Amendment, against the compulsion created by the statute in question, has not heretofore come before this Court. Here and now this conflict is presented—directly and specifically.

And the basic point the plaintiff is now making is that the concept of deferring to the policy maker is not to be acquiescently followed here — as if the mighty interdiction of the First Amendment were not applicable to the case. For it is applicable, and it is here brought to bear directly, specifically and in all its transcending power.

> "I am convinced that no liberty is more essential to the continued vitality of the free society which our Constitution guarantees than is the religious liberty protected by the Free Exercise Clause explicit in the First Amendment and imbedded in the Fourteenth".
>
> *Sherbert vs. Verner*, 374 US 398, 413, 83 S Ct 1790, 10 L Ed 2d 965, 976
> Mr. Justice Stewart (concurring)

"[T]he values of the First Amendment, as embodied in the Fourteenth, look primarily towards the preservation of personal liberty, rather than towards the fulfillment of collective goals.

. . .

"The Court in such cases is not confined to the narrow inquiry whether the challenged law is rationally related to some legitimate legislative end. Nor is the case decided by a finding that the State's interest is substantial and important, as well as rationally justifiable.

. . .

"The right of a State to regulate, for example, a public utility may well include, so far as the due process test is concerned, power to impose all of the restrictions which a legislature may have a 'rational basis, for adopting. But freedoms of speech and of press, of assembly, and of worship may not be infringed on such slender grounds. They are susceptible of restriction only to prevent grave and immediate danger to interests which the State may lawfully protect.

. . .

"This exacting standard has been consistently applied by this Court as the test of legislation under all clauses of the First Amendment, not only those specifically dealing with freedom of speech and of the press. For religious freedom—the freedom to believe and to practice strange and, it may be, foreign creeds—has classically been one of the highest values of our society.

. . .

"The honored place of religious freedom in our constitutional hierarchy . . . must now be taken to be settled".

Braunfeld vs. Brown, 366 US 599, 610, 611, 612, 613, 81 S Ct 1144, 6 L Ed 2d 563, 570, 571, 572
Mr. Justice Brennan (concurring and dissenting)

"The Free Exercise Clause, likewise considered many times here, withdraws from legislative power, state and federal, the exertion of any restraint on the free exercise of religion. Its purpose is to secure religious liberty in the individual by prohibiting any invasions thereof by civil authority".

Abington School District vs. Schempp, 374 US 203, 222-223, 83 S Ct 1560, 10 L Ed 2d 844, 858

"We must next consider whether some compelling state interest . . . justifies the substantial infringement of appellant's First Amendment right. It is basic that no showing merely of a rational relationship to some colorable state interest would suffice".

Sherbert vs. Verner, 374 US 398, 406, 83 S Ct 1790, 10 L Ed 2d 965, 972

The issue in *Sherbert vs. Verner* was closely analogous to that of the present case. In that case an employee was discharged from her employment because she refused to work on Saturdays. It was undisputed

that such refusal was based solely on the employee's conviction that working on Saturday conflicted with her religion. Her discharge was a matter of private action, in which the hand of Government was not present. But thereafter, by governmental authority, she was denied unemployment benefits. This Court held that such governmental action was constitutionally invalid, in that it brought to bear upon the employee a harmful consequence because of her adherence to her religion.

"We turn first to the question whether the disqualification for benefits imposes any burden on the free exercise of appellant's religion. We think it is clear that it does.

. . .

"Here not only is it apparent that appellant's declared ineligibility for benefits derives solely from the practice of her religion, but the pressure upon her to forgo that practice is unmistakable. The ruling forces her to choose between following the precepts of her religion and forfeiting benefits, on the one hand, and abandoning one of the precepts of her religion in order to accept work, on the other hand.

. . .

". . . [T]o condition the availability of benefits upon this appellant's willingness to violate a cardinal principle of her religious faith effectively pena-

lizes the free exercise of her constitutional liberties".

Sherbert vs. Verner, 374 US 398, 403, 404, 406, 83 S Ct 1790, 10 L Ed 2d 965, 970, 971

Russell vs. Catherwood was similarly a case relating to unemployment benefits. There Chief Justice Burger, with whom Mr. Justice Douglas joined, in dissenting from a denial of Writ of Certiorari, said:

"The Industrial Commissioner, if we are to place any weight on his response here, has shown that he considers the petitioner bound to accept a job tender even when his acceptance requires union membership that is repugnant to him. It may be that on plenary consideration we would conclude that the Constitution requires the respondent to provide employment that does not conflict with the worker's freedom of association, as might be indicated under *Sherbert v. Verner*, 374 U.S. 398 (1963).

• • •

"I would grant the writ because I believe that the petitioner has presented a substantial question and possibly one of important constitutional dimensions that warrants plenary—not summary— consideration".

Russell vs. Catherwood, No. 1978, Misc., Decided June 29, 1970 (On Petition For Writ of Certiorari to the Appellate Division, Supreme Court of New York)

It is well to consider the steps of inference, piled one upon the other, by which the lower Courts deem that the basic and massive barrier of the First Amendment is here surmounted. Congress, of course, has the power "to regulate commerce . . . among the several States"[1]—and therefore it can regulate labor relations in the railway industry—and therefore it can compel collective bargaining between employers and Unions in the industry—and therefore it can authorize a compulsion that all employees shall pay dues and fees to the Unions in order to work in the industry.

Is the last step in this legal structure to be considered of such high value and towering importance that it is to be allowed to vault over the First Amendment? The Courts below say that the answer is—yes[2].

> "The Constitution was intended—its very purpose was—to prevent experimentation with the fundamental rights of the individual".
>
> *Truax vs. Corrigan*, 257 US 312, 338, 42 S Ct 124, 66 L Ed 254, 265

"The very purpose of a Bill of Rights was to withdraw certain subjects from the vicissitudes of politi-

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[1]Constitution of the United States, Article I, Section 8(3).

[2]It is significant to note that in the Labor Management Relations Act, Congress itself did not consider this last step of compulsion so important to the regulation of commerce, but that it was willing, in Section 14(b) of that Act, for this compulsion to be subordinated to any State laws disapproving it. 29 USC §164(b).

cal controversy, to place them beyond the reach of majorities and officials and to establish them as legal principles to be applied by the courts. One's right to life, liberty, and property, to free speech, a free press, freedom of worship and assembly, and other fundamental rights may not be submitted to vote; they depend on the outcome of no elections".

West Virginia State Board of Education vs. Barnette, 319 US 624, 638, 641, 63 S Ct 1178, 87 L Ed 1628, 1638, 1639

In a dissenting opinion which later became the majority view of this Court in *Barnette*, Mr. Justice Stone discerningly observed:

"History teaches us that there have been but few infringements of personal liberty by the state which have not been justified, as they are here, in the name of righteousness and the public good, and few which have not been directed, as they are now, at politically helpless minorities. The framers were not unaware that under the system which they created most governmental curtailments of personal liberty would have the support of a legislative judgment that the public interest would be better served by its curtailment than by its constitutional protection".

Minersville School District vs. Gobitis, 310 US 586, 604-605, 60 S Ct 1010, 84 L Ed 1375, 1384 Mr. Justice Stone (dissenting)

To Thomas Jefferson it was clear that "to compel a man to furnish contributions of money for the propagation of opinions which he disbelieves, is sinful and tyrannical". Quoted in *McGowan vs. Maryland*, 366 US 420, 465, 81 S Ct 1101, 6 L Ed 2d 393, 421[1].

In recent cases, this Court has held that various interests—surely no more fundamental than that of religious liberty—are constitutionally protected to the individual against governmental action, federal or state. These include, for example:

> A constitutional right, when accused of crime, to be fully advised, counseled and protected from pressure at all stages.
>
> *Escobedo vs. Illinois*, 378 US 478, 84 S Ct 1758, 12 L Ed 2d 977;
> *Miranda vs. Arizona*, 384 US 436, 86 S Ct 1602, 16 L Ed 2d 694

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[1]Recently, in a case very similar to that which is now presented the United States District Court for the District of Massachusetts upholds the compulsion here in question against a First Amendment plea of religious liberty and advances the rather amazing proposition that "this action is not a violation of the First Amendment because it is the equivalent of a non-discriminatory tax levied pursuant to a power conferred by the Constitution". *Linscott vs. Miller Falls Company, et al*, __ F. Supp. __ (Civil Action No. 70-467-W, decision rendered September 16, 1970).

It is ironic to note that this same District Court lately held, on the other hand, that the same plea of religious liberty under the First Amendment, by a conscientious objector whom the Court deemed not within the exemptions of the Military Training and Service Act, prevails nevertheless against the Nation's present draft call. *United States vs. Sisson*, 297 F. Supp. 902 (1969).

A constitutional right against being penalized for working in a United States Defense facility while holding membership in the communist party, with knowledge that the party had not complied with a final order to register as a communist-action organization.

United States vs. Robel, 389 US 258, 88 S Ct 419, 19 L Ed 2d 508

A constitutional right against being suspended from a public school for wearing black arm-bands of protest or "freedom buttons".

Tinker vs. Des Moines Community School District, 393 US 503, 89 S Ct 733, 21 L Ed 2d 731

It is now even held that "guarantees in the Bill of Rights have penumbras, formed by emanations from those guarantees", and that as to such areas, though not named in the Constitution, the individual is nevertheless by that great Charter protected against compulsions brought to bear upon him under the authority of government, state or federal. *Griswold vs. Connecticut*, 381 US 479, 484, 85 S Ct 1678, 14 L Ed 2d 510, 514.

If rights such as there are protected by the Constitution, then surely the shield of religious liberty—positive, explicit, fundamental and primary among constitutional guarantees—will not now be denied by this Court to a citizen who, through the action of his government, has been deprived of his livelihood because he adhered to his religion.

CONCLUSION

Upon all of the foregoing, the Petitioner earnestly prays the Court for a Writ of Certiorari, directed to the United States Court of Appeals for the Fifth Circuit, to the end that this Court may review the decision which has been rendered by that Court in the present case.

Respectfully submitted,

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